

STATE OF WASHINGTON

Department of Retirement Systems

REQUEST FOR PROPOSALS

RFP NO. 05-007

PROJECT TITLE:

Quality Assurance Services for the Washington Public Safety Employees' Retirement System Project (PSERS).

PROPOSAL DUE DATE:

June 20, 2005

EXPECTED TIME PERIOD FOR CONTRACT:

Date of Washington State Office of Financial Management (OFM) approval thru June 30, 2006

VENDOR ELIGIBILITY:

This procurement is open to those Vendors that satisfy the minimum qualifications stated herein and are available for work in Washington State.

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Department of Retirement Systems, hereafter called the "AGENCY," is initiating this Request for Proposals (RFP) to solicit responses from firms interested in providing Quality Assurance services for the Public Safety Employees' Retirement System Project.

Background

The 2004 legislature enacted House Bill 2537, creating the Public Safety Employees' Retirement System (PSERS). PSERS, which is effective July 1, 2006, will provide a separate retirement system for those Public Safety Employees' Retirement System (PERS) Plan 2 and 3 members whose jobs contain a high degree of physical risk to their own personal safety and who engage in specific duties as outlined in the legislation.

Members of PERS Plan 2 or Plan 3 prior to July 1, 2006 who are employed as a public safety employee on July 1, 2006, will have the choice of joining the new system or remaining in PERS. The time frame for making this choice is from July 1, 2006 through September 30, 2006. Employees hired into public safety positions on or after July 1, 2006, will become members of PSERS. Public safety employees in PERS Plan 1 will remain in PERS.

The Office of the State Actuary (OSA) estimates there are approximately 8,000 PERS Plan 2 and Plan 3 members employed by state agencies, political subdivisions and local government whose direct responsibility is protecting the public. This includes employees in the following positions: city corrections officers, jailers, police support officers, custody officers, and bailiffs; county corrections officers, jailers, custody officers, and sheriffs corrections officers; county probation officers and probations counselors; state correctional officers, correctional sergeants, and community corrections officers; liquor enforcement officers; park rangers; commercial vehicle enforcement officers; and gambling special agents.

The PSERS Project

The purpose of this project is to successfully implement PSERS on time and within budget. The project is responsible for coordinating all activities associated with the implementation of PSERS. The project will ensure processes (both manual and automated), procedures, policies and rules are in place to support PSERS. The project will also ensure that an effective communication strategy is in place for communicating with members and employers impacted by PSERS.

Additional Project Oversight

Information technology projects may require oversight from the Department of Information Systems (DIS) and Information Services Board (ISB). The AGENCY's Investment Plan has been approved by DIS. The project has been evaluated as having a high severity level and low risk level, meriting an oversight level of two. Level two oversight requires DIS approval of the Investment Plan and regular updates to be conducted with the DIS Technology Management Consultant. The AGENCY has committed to providing regular status reports to DIS, and the DIS oversight liaison is invited to all regularly scheduled project meetings.

1.2 OBJECTIVE

The AGENCY seeks bids from qualified firms or individuals to provide Quality Assurance (QA) Services to the PSERS Project. These QA services will provide ongoing advice, counsel and recommendations to the PSERS Project Manager, Executive sponsors and the Strategic Initiatives Manager.

1.3 QUALIFICATIONS

The Vendor must be licensed to conduct business in the State of Washington and have a proven track record of successfully supplying similar services to public and private clients for at least five years.

In addition to the above requirements, DRS is looking for vendors with the following knowledge and experience. (M) Mandatory (D) Desirable

- Experience in conducting quality assurance reviews and analysis of complex projects containing automated systems development and testing activities. (M)
- Experience in the development and implementation of testing strategies for major corporate level systems. (M)
- Experience in the development and implementation of alternative action plans for existing projects. (M)
- Experience in Project Management and/or Analysis and Systems Development. (M)
- Experience in the business environment of retirement, financial investments or related fields. (D)
- Experience presenting QA findings and recommendations to Executive Management. (D)
- Knowledge and experience working within the DIS/Washington State project oversight environment. (D)

1.4 PERIOD OF PERFORMANCE

The period of performance of this contract will be from date of Office of Financial Management (OFM) approval through June 30, 2006, unless extended by mutual written agreement of both parties. The AGENCY is interested in starting this contract as quickly as possible. As a result, availability will be considered when evaluating the proposals.

1.5 DEFINITIONS

Definitions for the purposes of this RFP include:

AGENCY – The Department of Retirement Systems (DRS) is the AGENCY of the State of Washington that is issuing this RFP.

CONTRACTOR – A vendor that has signed a contract with DRS for supplying the requested services.

PROPOSAL – A formal offer submitted in response to this solicitation.

REQUEST FOR PROPOSALS (RFP) – Formal procurement document in which a service or need is identified by the AGENCY. The purpose of an RFP is to provide the Vendor the opportunity to participate in the competitive acquisition process.

RFP COORDINATOR - The AGENCY staff member assigned as the point of contact for the purposes of this RFP.

VENDOR – A firm in the business of supplying the requested services.

2. GENERAL INFORMATION FOR VENDORS

2.1 SCOPE OF SERVICES

The Quality Assurance Contractor will provide timely, independent and objective reviews of the project, its progress and any difficulties including, but not limited to, an assessment of the quality of deliverables. The Contractor will provide a common source of reliable independent information to those charged with the oversight of project.

The Contractor will perform periodic reviews, analysis and written feedback of the PSERS Project, and related activities to assure that effective project planning, management, risk assessment and controls are being applied to assure project success.

The Contractor will provide consultative support to the Project Manager and the Strategic Initiatives Manager in the development and implementation of suggested alternative actions based on findings from periodic reviews or other outside influences.

Tasks and Deliverables

The tasks/deliverables identified below are subject to the review of the DRS Strategic Initiatives Manager as to satisfactory accomplishment. The Contractor's tasks and deliverables may include, but are not limited to:

- **Develop and gain approval of Quality Assurance Plan** – in conjunction with the Strategic Initiatives Manager and PSERS Project Manager develop and gain executive sponsor approval of a QA Plan that specifically defines the various review components, roles and responsibilities, and schedule for each of the proposed reviews and/or other monitoring methods.
- **Perform project Quality Assurance reviews** – conduct four QA reviews and provide written reports of the PSERS project for management, risk, progress and controls with documented findings and recommendations, made to the Strategic Initiatives Manager and PSERS Project Manager toward any suggested action(s) to achieve success for the remainder of the project.

Anticipated review points will be no less frequent than the end of the following project phases:

- Business requirements
 - Construction
 - Testing
 - Implementation
-
- **Produce status reports** – on a monthly basis, provide a written report to the Strategic Initiatives Manager, Executive Sponsors and the PSERS Project Manager, outlining current/anticipated QA activities and providing an overall prospective of the project's progress/issues.
 - **Participate in the development and implementation of suggested activities** - based on the findings and recommendations from the QA reviews and other monitoring methods, work with the PSERS Project Manager to develop and implement the necessary steps for suggested improvements in the project plan and/or other project activities.

- **Perform final Quality Assurance review** - provide a QA review of the overall project to verify proper procedures were followed and that the test results indicate the application/process will meet the client's expectations and business needs. Based on this review, provide the DRS Strategic Initiatives Manager and PSERS Project Manager with documented findings and recommendations of activities required to satisfactorily complete the project.

2.2 MANAGEMENT AND ORGANIZATION

The majority of work will be conducted in Tumwater, Washington at the AGENCY's headquarters, on 6835 Capitol Boulevard. The VENDOR may perform required work off-site, using the VENDOR's equipment, if deemed appropriate and authorized in writing by the AGENCY.

VENDOR staff must be available when required and will have access to AGENCY resources.

VENDOR staff may, during the course of the execution of the contract, provide services to other clients if those services: 1) Are not a conflict of interest with AGENCY work, as detailed under the general terms and conditions of the eventual contract; and 2) Do not interfere with the completion of the tasks and deliverables identified in the Statement of Work. Written approval from the AGENCY must be obtained before VENDOR staff provides services to any other client concurrent with their work for the AGENCY.

AGENCY staff will provide guidance and review regarding progress toward completion of the tasks/deliverables identified in the Statement of Work.

All materials resulting from the contract will be for the sole use of the AGENCY and will become the AGENCY's property.

2.3 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the VENDOR and the AGENCY upon receipt of this RFP must be with the RFP Coordinator, as follows:

Name	Leslie Saeger
Mailing Address	PO Box 48380
	Olympia, WA 98504-8380
Physical Address	6835 Capitol Blvd
	Tumwater, WA 98501
Phone Number	360-664-7291
Fax Number	360-753-3166
E-Mail Address	leslies@drs.wa.gov

Any other communication will be considered unofficial and non-binding on the AGENCY. VENDORS are to rely on *written* statements issued by the RFP Coordinator and information posted on the department's official website at <http://www.drs.wa.gov/administration/rfp/>. Communication directed to parties other than the RFP Coordinator may result in disqualification of the VENDOR.

2.4 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	June 6, 2005
Question & answer period	June 6 - 13, 2005
Answers posted to website	June 15, 2005
Proposals due	June 20, 2005, 4:00 pm
Evaluate proposals	June 21 – June 28, 2005
Announce “Apparent Successful Vendor”	July 1, 2005
Request debriefing conference	July 5 - 7
Debriefing conferences (if requested)	July 6 - 12 2005
Protest period	July 6 - 15, 2005
Negotiate/sign contract	July 18 - 22, 2005

The AGENCY reserves the right to revise the above schedule.

2.5 QUESTIONS AND ANSWERS

VENDORS may submit written questions to the RFP Coordinator via e-mail. Questions must be received no later than 1:00 pm, Pacific Daylight Savings Time, June 13, 2005. The AGENCY will respond to all questions by posting the questions and the answers on the AGENCY Web site within five days of receipt. The questions and answers can be accessed at: <http://www.drs.wa.gov/administration/rfp/>. The AGENCY will be bound only to written answers to questions.

2.6 SUBMISSION OF PROPOSALS

VENDORS are required to submit three (3) paper copies of their proposal. Two must have original signatures and the other may have photocopied signatures. The VENDOR must also submit a copy of the entire proposal on a CD or floppy disk in a format compatible with MS Word 2000. The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 4:00 p.m., Pacific Daylight Savings Time, June 20, 2005.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.3. The envelope should be clearly marked to the attention of the RFP Coordinator.

VENDORS mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. VENDORS assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using electronic media such as facsimile transmission or e-mail.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.7 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement become the property of the AGENCY.

All proposals received will remain confidential until the contract, if any, resulting from this RFP is signed by the AGENCY and the apparently successful VENDOR; thereafter, the proposals will be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the VENDOR desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified as well as the particular exception from disclosure upon which the VENDOR is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a VENDOR's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon chapter 42.17 RCW and chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The VENDOR must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected VENDOR has been given an opportunity to seek a court injunction against the requested disclosure.

2.8 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be published on the AGENCY website, which is accessible from <http://www.drs.wa.gov/administration/rfp/>. For this purpose, the published questions and answers and any other pertinent information will be considered an addendum to the RFP and also placed on the web site. It will be the VENDOR's responsibility to monitor this site during preparation of their proposal.

The AGENCY also reserves the right to cancel or to reissue the RFP, in whole or in part, prior to execution of a contract.

2.9 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation will be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

2.10 ACCEPTANCE PERIOD

All proposals must be valid for 60 days from the due date for receipt of proposals.

2.11 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The VENDOR is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion, to waive minor administrative irregularities.

2.12 MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms the VENDOR can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a VENDOR for clarification of its proposal.

The VENDOR should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or the VENDOR's entire proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

2.13 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparently successful VENDOR will be expected to enter into a contract that is substantially the same as the sample contract included as Attachment B, including its general terms and conditions. In no event is a VENDOR to submit its own standard contract terms and conditions in response to this solicitation. The VENDOR may submit exceptions as allowed in the Certifications and Assurances document, included as Attachment A to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.14 COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the VENDOR in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

2.15 NO OBLIGATION TO CONTRACT

This RFP does not obligate the State of Washington or the AGENCY to contract for services specified herein.

2.16 REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and to not issue a contract as a result of this RFP.

2.17 COMMITMENT OF FUNDS

The Director of the AGENCY and her delegate are the only individuals who may legally commit the AGENCY to the expenditure of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.18 BILLINGS

The Contractor may bill the AGENCY after the successful completion of tasks/deliverables, no more frequently than monthly. Billings must indicate the contract number, the project name, VENDOR staff person, the task/deliverable completed and the pre-agreed upon billing amount. The Contract Manager must approve billings before payment will be made.

Payment will be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment will be sent to the address designated by the Contractor.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract will be made by the AGENCY.

2.19 INSURANCE COVERAGE

The Contractor is to furnish the AGENCY with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor must, at its own expense, obtain and keep in force insurance coverage, which must be maintained in full force and effect during the term of the contract. The Contractor must furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy must be forwarded to the AGENCY within fifteen (15) days of the contract effective date.

Liability Insurance

- A. Commercial General Liability Insurance: The Contractor must maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit must be at least twice the "each occurrence" limit. CGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance must be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- B. Business Auto Policy: As applicable, the Contractor must maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance must cover liability arising out of "Any Auto." Business auto coverage must be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability (“Stop Gap”) Insurance

In addition, the Contractor must buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy must include the following provisions:

1. Additional Insured. The State of Washington, Department of Retirement Systems, its elected and appointed officials, agents and employees must be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract must be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. Cancellation. State of Washington, Department of Retirement Systems, must be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer must give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State must be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State must be given 10 days advance notice of cancellation.
3. Identification. Policy must reference the State’s contract number and the AGENCY name.
4. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception must be reviewed and approved by the Department of Retirement Systems Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapter 48.15 RCW and 284-15 WAC.
5. Excess Coverage. By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits must not limit Contractor’s liability under the indemnities and reimbursements granted to the State in this contract.

Workers' Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper. The sections of the proposal are to be submitted in the order noted below:

- A. Letter of Submittal
- B. Signed Certification and Assurances Form (Attachment A to this RFP)
- C. Proposal

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the VENDOR in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the proposal for it to be considered responsive. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal must be signed and dated by a person authorized to legally bind the VENDOR to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the VENDOR and any proposed subcontractors:

- A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- B. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
- C. Legal status of the VENDOR (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now substantially exists.

- D. Federal Employer Tax Identification number or Social Security number and the Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
- E. Location of the facility from which the VENDOR would operate.
- F. Identification of any state employees or former state employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the VENDOR's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the VENDOR may be disqualified from further consideration for the award of a contract.

3.2 CERTIFICATION AND ASSURANCES FORM (MANDATORY)

The Certification and Assurances form, attached as Attachment A, must be signed and dated by a person authorized to legally bind the VENDOR to a contractual relationship.

3.3 PROPOSAL (MANDATORY)

The proposal must contain a comprehensive description of services and experience, including the following elements:

- A. Resume for proposed contractor (SCORED)
- B. Date the proposed contractor will be available (SCORED)
- C. Description of how the proposed contractor meets the qualifications described in Section 1.3 and the degree to which they meet the mandatory (M) requirements (SCORED)
- D. References (NON-SCORED)
List names, addresses, telephone numbers, and fax numbers/e-mail addresses of at least two business references for whom similar services have been provided within the last two years and briefly describe the type of service provided. The VENDOR must grant permission to the AGENCY to contact the references. Do not include current AGENCY staff as references.
- E. Description of the proposed contractor's approach for monitoring the project and the method by which issues or concerns would be raised. (SCORED)
- F. Describe the proposed content of the QA Plan deliverable. (SCORED)

- G. Specify a fixed cost for each of the following deliverables: (SCORED)
- QA Plan
 - QA Reviews/Reports (not to exceed 4)
 - Monthly Status Reports (not to exceed 12)
 - Consulting on the implementation of suggested activities (not to exceed 20 hours)
 - Final QA Review/Report

The total cost for the contract will not exceed \$25,000. Proposals for higher amounts will not be accepted.

- H. To avoid the possibility for conflicts of interest, any firm participating in other AGENCY projects or procurement processes must declare such involvement in their proposal, including detailed description of the activities they are providing and the time-period of their involvement. (NON-SCORED)
- I. If the VENDOR has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the VENDOR's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the VENDOR, or (b) litigated and such litigation determined that the VENDOR was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the VENDOR's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If the VENDOR has experienced no such termination for default in the past five years, so indicate.

- J. OMWBE Certification (Optional)
Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

4. EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. An evaluation team, designated by the AGENCY, will score the submissions to determine the apparently successful VENDOR.

4.2 EVALUATION OF PROPOSALS

The AGENCY will establish a review committee to evaluate the proposals. Candidates will be evaluated on the SCORED items described under Section 3.3 (Proposal). As part of that evaluation, The AGENCY reserves the right to seek clarification of proposal content in order to fairly evaluate all proposals on common grounds. Based on the results of the evaluation, the AGENCY may conduct interviews and perform reference checks for those candidates that are deemed viable. The AGENCY also reserves the right to contact references other than those supplied by the VENDOR. Based on the results of reference checks, the AGENCY may or may not select the highest-scoring VENDOR.

4.3 NOTIFICATION TO VENDORS

Firms whose proposals have not been selected for further negotiation or award will be notified by e-mail.

4.4 DEBRIEFING OF UNSUCCESSFUL VENDORS

Upon request, the AGENCY will schedule and hold a debriefing conference with an unsuccessful VENDOR. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after a notice that an Apparently Successful VENDOR has been selected is sent by the AGENCY. The debriefing must be held within three (3) business days of the request.

Debriefings will be limited to a critique of the requesting VENDOR's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.5 PROTEST PROCEDURE

The protest procedure is available to VENDORS who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the VENDOR is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile or e-mail, but must be followed by an original, signed, document.

VENDORS protesting this procurement must follow the procedures described below. Protests that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to VENDORS under this procurement.

All protests must be in writing and signed by the protesting party or an authorized agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests must be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A. A matter of bias, discrimination or conflict of interest on the part of the evaluators.
- B. Errors in computing the score.
- C. Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another VENDOR who submitted a proposal, such VENDOR will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest will:

- A. Find the protest lacking in merit and uphold the AGENCY'S action; or
- B. Find only technical or harmless errors in the AGENCY'S acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- C. Find merit in the protest and provide the AGENCY options which may include:
 - 1. Correct the errors and re-evaluate all proposals, and/or
 - 2. Reissue the solicitation document and begin a new process, or
 - 3. Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful VENDOR. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP ATTACHMENTS

Attachment A Certifications and Assurances form

Attachment B Sample Personal Service Contract including General Terms and
Conditions

ATTACHMENT A (RFP NO. 05-007)

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60 day period.
3. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents, including billing rates, and the attached sample contract including its general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
6. No attempt has been made or will be made by the VENDOR to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Signature of Vendor

Title

Date

(SAMPLE)
CONTRACT FOR PERSONAL SERVICES
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF RETIREMENT SYSTEMS
AND

This Contract is made and entered into by and between the state of Washington, Department of Retirement Systems, hereinafter referred to as the "**AGENCY**", and the below named firm, hereinafter referred to as "**CONTRACTOR**,"

Contractor Name
Address
City, State & Zip Code
Phone
E-mail Address

Washington State UBI No.
Federal ID No.

PURPOSE

The purpose of this contract is to . . .

SCOPE OF WORK

- A. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

PERIOD OF PERFORMANCE

The period of performance under this contract will be from _____ or date of execution, whichever is later, through _____.

OFM FILING REQUIREMENT

10-Day Filing

Under the provisions of Chapter 39.29 RCW, this personal service contract [*or amendment*] is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

COMPENSATION AND PAYMENT

AGENCY shall pay an amount not to exceed _____ (\$____) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

[or as set forth in the Request for Proposals No. ____].

BILLING PROCEDURES

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
<u>Contractor Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: () Fax: () E-mail address:	<u>Agency Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: () Fax: () E-mail address:

INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section *[or as set forth in the Request for Proposals No. ____]*.

ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the Exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of _____ pages and _____ attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]

[AGENCY NAME]

Signature

Signature

Title
Date

Date

Title

APPROVED AS TO FORM

Assistant Attorney General

Date

EXHIBIT A

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the _____, of the state of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.
- B. "Agent" shall mean the Director, _____, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA

In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION

The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:
 - be in writing;
 - state the disputed issue(s);
 - state the relative positions of the parties;
 - state the Contractor's name, address, and contract number; and
 - be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

The Agency shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY

The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION

The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the 10 day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY

While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE

In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The Agency reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS

- A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.
- B. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.

- C. The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.